

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JAMES BOST

Claimant

VS.

BOEING MILITARY AIRPLANES

Respondent

AND

AETNA CASUALTY & SURETY CO.

Insurance Carrier

AND

KANSAS WORKERS COMPENSATION FUND

Docket No. 181,670

ORDER

ON the 7th day of June, 1994, the application of the respondent and insurance carrier for review by the Workers Compensation Appeals Board of a Preliminary Hearing Order entered by Administrative Law Judge John D. Clark, dated March 29, 1994, came on for oral argument.

APPEARANCES

Claimant appeared by and through his attorney, Russell Cranmer of Wichita, Kansas. Respondent and insurance carrier appeared by and through their attorney, Eric Kuhn of Wichita, Kansas. The Kansas Workers Compensation Fund appeared by and through its attorney, Cortland Q. Clotfelter of Wichita, Kansas. There were no other appearances.

RECORD

The record consists of the documents filed of record with the Division of Workers Compensation in this docketed matter. It includes the transcript of preliminary hearing of January 20, 1994, the exhibits introduced at that hearing, and the letter of Paul D. Lesko, M.D., dated March 4, 1994.

ISSUES

For preliminary hearing purposes the Administrative Law Judge found that claimant was entitled to temporary total and medical benefits. The respondent and insurance carrier contend the Administrative Law Judge erred when he found claimant's present symptomatology related to a work-related incident occurring on June 3, 1993. That is the issue now before the Appeals Board.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board, for purposes of preliminary hearing, finds:

(1) The claimant has failed to establish that his current symptomatology is related to the work-related incident of June 3, 1993. Therefore, the preliminary hearing order of Administrative Law Judge John D. Clark, dated March 29, 1994, should be set aside.

The evidence is uncontroverted that claimant sustained a back injury while at work for the respondent on June 3, 1993. On June 29, 1993, claimant was released to return to work without restrictions. In the latter part of August 1993, claimant, while at home, was reaching for a bucket when his back gave out. Claimant now experiences similar symptoms that he had when his back was initially hurt on June 3, 1993.

Board-certified orthopedic surgeon, Robert L. Eyster, M.D., treated claimant for the back injury occurring in June. Regarding the bucket incident, Dr. Eyster is of the following opinion: "...to be more probably true than not that indeed when Mr. Bost went out to the garage and bent over to pick up a bucket said event did aggravate his back which was originally injured as a result of a slip and fall on June 3, 1993." The foregoing quote is the entire extent of evidence before this Appeals Board upon which we are to determine the relationship, if any, between claimant's current symptomatology and the June 1993 back injury.

Claimant contends his present symptomatology is a natural consequence of the work-related accident of June 3, 1993. The respondent contends that bending over to pick up a bucket is a new and distinct injury, and, therefore, claimant is not entitled to workers compensation benefits as a result of the incident.

Based upon the evidence presented to date, the Appeals Board finds that claimant has failed to prove that his current symptomatology is a natural consequence of the work-related accident of June 1993.

In proceedings under the Workers Compensation Act, the burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions upon which the claimant's right depends. In determining whether the claimant has met this burden of proof, the trier of fact shall consider the whole record. See K.S.A. 44-501(a).

"Burden of proof" means the burden of a party to persuade the trier of fact by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record. See K.S.A. 44-508(g).

When a primary injury under the Workmen's Compensation Act arises out of and in the course of employment, every natural consequence that flows from the injury is compensable if it is a direct and natural result of the primary injury. See Jackson v. Stevens Well Service, 208 Kan. 637, 493 P.2d 264 (1972). However, the mere fact that someone experiences increased symptomatology after an initial work-related accident does not automatically entitle the injured worker to additional benefits under the workers' compensation act.

See Gillig v. Cities Service Gas Co., 222 Kan. 369, 564 P.2d 548 (1977) where the Kansas Supreme Court held there was sufficient evidence in the record to support the Trial Court's finding that claimant was entitled to additional medical benefits under the Workmen's Compensation Act when he twisted his right knee while stepping from a tractor in March 1975 that resulted in surgery. The Court held that the medical testimony established that claimant's initial work-related injury to the knee in January 1973 was ultimately responsible for the surgery to claimant's knee after the 1975 incident and the medical evidence established the relationship of the initial injury to the re-injury or aggravation.

Also see Stockman v. Goodyear Tire & Rubber Co., 211 Kan. 260, 505 P.2d 697 (1973) where the Kansas Court upheld the Trial Court's finding that claimant was not entitled to benefits for increased disability to his back resulting from a new and distinct injury that claimant sustained while throwing a tire into the trunk of his car.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that, for preliminary hearing purposes, the Preliminary Hearing Order of Administrative Law Judge John D. Clark dated March 29, 1994, should be, and hereby is, reversed as claimant has failed to establish that his current symptomatology is sufficiently related to the work-related accident of June 3, 1993, to entitle claimant to benefits.

IT IS SO ORDERED.

Dated this ____ day of July, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

cc: Randall Cranmer, Attorney for Claimant, 2831 E. Central, Wichita, KS 67214
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